

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

JUAN JOHNSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 05 C 1042
	)	
REYNALDO GUEVARA, and the CITY	)	Judge Grady
OF CHICAGO,	)	Magistrate Judge Mason
	)	
Defendants.	)	

**DEFENDANTS' MOTION *IN LIMINE* NO. 10**

**DEFENDANTS' MOTION *IN LIMINE* TO BAR EVIDENCE OR SUGGESTION  
THAT DEFENDANT GUEVARA IS INDEMNIFIED**

Defendants Reynaldo Guevara and the City of Chicago ("City"), by their attorneys, James G. Sotos and Elizabeth A. Ekl of James G. Sotos & Associates, Ltd., move this Honorable Court for an Order *in limine* barring Plaintiff from offering any testimony, evidence, or argument indicating that Defendant Guevara may be indemnified by the City in this action. In support thereof, Defendants state:

Evidence is admissible at trial only if it makes the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. FED. R. EVID. 401; *People v. Lewis*, 165 Ill.2d 305, 329 (1995). Moreover, even when evidence is relevant, it should be excluded if its prejudicial effect substantially outweighs its probative value. FED. R. EVID. 403; *Id.*

Thus, the reasons for excluding other sources of payment for a judgment are twofold. First, the identity of possible sources to pay a judgment is not relevant to the issue of liability. *See Via v. Lagrand*, No. 03 C 3278, 2007 WL 495287, at \*4 (N.D. Ill. Feb. 12, 2007) (holding

that evidence of indemnification is irrelevant), *and* FED. R. EVID. 411 (evidence of insurance coverage is irrelevant). Whether or not the City indemnifies Defendant Guevara is completely irrelevant to the issue of whether Defendant Guevara is liable for any acts he may have performed that proximately caused an injury to Plaintiff. Second, such information can be sufficiently prejudicial to deny a defendant a fair trial because it may influence a jury to find in favor of a plaintiff and further, to give the plaintiff a higher award than it otherwise would by reasoning that an insurance company, with “deep pockets” can afford a larger verdict. *Via v. Lagrand, supra; Townsend v. Benya*, 287 F.Supp.2d 868, 874 (N.D. Ill. 2003) (evidence of indemnification by the City is “too prejudicial to survive the Rule 403 balancing test); *see also, Saunders v. City of Chicago*, 320 F.Supp.2d 735, 738 (N.D. Ill. 2004).

Thus, Plaintiff should not be permitted to introduce evidence directly or indirectly that Defendant Guevara may be indemnified by the City because it is irrelevant and because it presents the very real danger of unfair prejudice. As the Seventh Circuit noted in *Lawson v. Trowbridge*, 153 F.3d 368, 379 (7<sup>th</sup> Cir. 1998): “In the general case courts exclude evidence of indemnification out of a fear that it will encourage a jury to inflate its damages award because it knows the government – not the individual defendants – is footing the bill.” *See also, Larez v. Holcomb*, 16 F.3d 1513, 1518 (9<sup>th</sup> Cir. 1994) (holding that instructions to jury on indemnification in § 1983 action required new trial); *Green v. Baron*, 879 F.2d 305, 310 (8<sup>th</sup> Cir. 1989) (stating that instructions concerning indemnification are extremely prejudicial); *Griffin v. Hilke*, 804 F.2d 1052, 1057 (8<sup>th</sup> Cir. 1986) (declaring indemnification instructions to constitute reversible error).

WHEREFORE, Defendants respectfully request this Honorable Court enter an Order *in limine* consistent with the relief sought by this Motion.

Dated: April 23, 2009

By: /s Elizabeth A. Ekl  
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**CERTIFICATE OF SERVICE**

I hereby certify, under penalties of perjury pursuant to 28 U.S.C.A. § 1746, that on **April 23, 2009**, I electronically filed the foregoing **Defendants' Motion *in Limine* to Bar Evidence or Suggestion that Defendant Guevara is Indemnified** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record: See Attached Service List.

RESPECTFULLY SUBMITTED,

**/s Elizabeth A. Ekl**

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One of the Attorneys for Defendants City of Chicago  
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